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10/774,059

02/06/2004

David Winstone Pedlar

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RESEARCH IN MOTION, LTD  
102 DECKER CT.  
SUITE 180  
IRVING, TX 75062

EXAMINER

VO, NGUYEN THANH

ART UNIT

PAPER NUMBER

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MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/774,059

Applicant(s)

PEDLAR ET AL.

Examiner

Nguyen Vo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuo (US 6,961,570 B2, cited by examiner) in view of Chun (US 2004/0038681 A1, cited by examiner).

As to claim 1, Kuo discloses a method of operating a communication device in a mobile communications network, the device operating using a protocol having a physical layer, a user layer and at least an RRC (radio resource control) layer and an RLC (radio link control) layer of a UMTS system (see column 1 lines 20-24; column 2 lines 6-27), wherein the RRC layer is arranged to submit an SDU to the RLC layer for

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communication using the physical layer (see column 2 lines 6-61), the method comprising in response to a timer process reaching a predetermined timeout value, causing said RRC layer to resubmit said SDU to said RLC layer a predetermined number N of times, each time starting said timer process (see column 3 lines 34-65); and in response to N further instances of said timer process reaching its timeout value, causing said RRC layer to submit to said RLC layer an error message indicative of an unrecoverable error in said RLC layer for emission in response thereto (see “unrecoverable error” at column 3 lines 21; see also column 2 lines 28-39; column 2 line 62 to column 3 line 22). Kuo thus discloses all the claimed limitations except that the timer process of the timers T305 and T307 is started at the RRC as claimed. However, Kuo does suggest that “It is the RRC layer 80 that is responsible for the establishment and configuring of the RBs 28, 48” (see column 2 lines 28-29). Therefore, those skilled in the art would have recognized that the timers T305 and T307 should also be started by the RRC. In addition, starting a timer by a RRC is known as taught by Chun (see paragraph [0045]). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Chun to Kuo, in order to reducing problems such as call interruptions (as suggested by Chun at paragraph [0024]).

As to claims 2, 6, 8, 12, Kuo discloses the claimed limitations (see column 3 lines 34-65).

As to claims 3, 9, it is clear that the number N302 at column 3 lines 37-43 of Kuo could be zero as claimed.

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As to claims 4-5, first of all the rejection to claim 1 as set forth above is herein incorporated. In addition, Kuo further discloses a CELL UPDATE message and a CELL UPDATE CONFIRM message as claimed (see column 3 lines 34-47).

As to claim 7, first of all the rejection to claim 1 as set forth above is herein incorporated. In addition, Kuo further discloses releasing connection between peer layers at the device and network as claimed (see column 3 lines 58-65).

As to claim 10, it is rejected for similar reasons as set forth in claims 4-5 and 7 above.

As to claim 11, the combination of Kuo and Chun fails to disclose that the SDU at column 2 lines 16-25 (see Kuo) is indicative of security configuration. The examiner, however, takes Official Notice that using SDU to indicate security configuration is known in mobile communication systems such as UMTS. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combination of Kuo and Chun such that the SDU is indicative of security configuration, in order to improve security in the UMTS.

As to claim 13, Kuo further discloses a CELL UPDATE message and a CELL UPDATE CONFIRM message as claimed (see column 3 lines 34-47).

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 10/774,306. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-14 of the copending Application No. 10/774,306 encompass claims 1-13 of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 1-13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application No. 10/774,307. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-13 of the copending Application No. 10/774,307 encompass claims 1-13 of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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**Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chen (US 2003/0207702 A1); Chen (US 2005/0054298 A1) and Wu (US 2004/0203623 A1) disclose communication between RRC and RLC in UMTS.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nguyen Vo whose telephone number is (571) 272-7901.

The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nguyen Vo  
Primary Examiner  
Art Unit 2618

*Nguyen Vo*  
5-29-07